

## PAYMENT BOND

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A payment bond is required on the following contracts for construction or facility improvements:

--If the borrower is a public body and the contract exceeds \$25,000, the form is required.

If a payment bond is not required, a borrower may nevertheless elect to use a payment bond in order to obtain the protections and benefits afforded under state law.

Procedure Reference: RUS Instruction 1780, §§ 1780.61 and 1780.75

Prepared by: \_\_\_\_\_

Number of Copies: Multiple originals may be created.

Signatures Required: Multiple originals may be created. All must be signed by contractor, surety and borrower.

### COMPLETION OF THE FORM:

1. Insert the name and address of the Contractor in the appropriate blanks.
2. Insert the type of entity which the Contractor is, i.e., corporation, partnership, individual, etc.
- 3-6. **SELECTION OF THE SURETY**: This is a *very important* requirement. The surety must satisfy *each* of the following requirements:
  - (a) The surety must be a corporate surety. [§ 2253.201(d), Texas Government Code];
  - (b) The surety must be authorized, licensed and admitted to do or transact business in the State of Texas. [RUS Instruction 1780, § 1780.75(c); § 2253.201(d), Texas Government Code];
  - (c) The surety must be licensed by the State of Texas to execute bond as a surety. [2253.201(d), Texas Government Code]; and
  - (d) The surety must hold a certificate of authority as an acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended. [RUS Instruction 1780, § 1780.75(c).]

If the surety does not satisfy *each* of these requirements, the surety may not be used for the payment bond.

3. Insert the complete and correct name of the surety. The name should be in all capital letters and should be in bold print.
4. Insert the complete mailing address of the surety. The mailing address should be in all capital letters and should be in bold print.
5. Insert the complete physical address of the surety. The physical address should be in all capital letters and should be in bold print.
6. Insert the complete telephone number (with area code) of the surety. The telephone number (with area code) should be in bold print.
7. Insert the name and address of the borrower in the appropriate blanks.
8. Insert the amount of the bond. The amount should not be less than the original amount of the contract.  
  
The amount should be expressed in words (in the appropriate blank) and then in numbers in the appropriate blank.
9. Insert the date of the contract. The date of the contract must be a date before or the same date as the date of the bond.
10. Insert a general description of the work to be done under the contract.
11. Insert the number of bonds being signed.
12. Insert the date of the bond. The date of the bond must be a date after or the same date as the date of the contract.
13. Insert the name and signature of the contractor (principal). The contractor's name and address should be typed below the signature line.
14. If the contractor is a corporation, the signature, name and title of the official signing the bond for the corporation should be inserted in the appropriate blanks.
15. If the contractor is a corporation, insert the signature, name and title of the person attesting the signature of the contractor. Also, the corporate seal should be placed at the appropriate location.
16. Insert the signature, name and address of the person witnessing the contractor's signature.
17. Insert the name and address of the surety.

18. The signature, name and title of the official signing the bond for the surety should be inserted in the appropriate blanks.
19. Insert the signature, name and title of the person attesting the signature of the surety. Also, the corporate seal should be placed at the appropriate location.
20. Insert the date that the borrower approves the payment bond.
21. Insert the name and address of the borrower.
22. The signature, name and title of the official signing the bond for the borrower should be inserted in the appropriate blanks.
23. Insert the signature, name and title of the person attesting the signature of the borrower. Also, the corporate seal, if appropriate, should be placed at the appropriate location.

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**PAYMENT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS:** that

\_\_\_\_\_(1)\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_(1)\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_(2)\_\_\_\_\_ hereinafter called **PRINCIPAL** and  
(Corporation, Partnership or Individual)

\_\_\_\_\_(3)\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_(4)\_\_\_\_\_  
(Mailing Address of Surety)

\_\_\_\_\_(5)\_\_\_\_\_  
(Physical Address of Surety)

\_\_\_\_\_(6)\_\_\_\_\_  
(Telephone Number, including area code, of Surety)

hereinafter called **SURETY**, are held and firmly bound unto

\_\_\_\_\_(7)\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_(7)\_\_\_\_\_  
(Address of Owner)

hereinafter called **OWNER** and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of

\_\_\_\_\_(8)\_\_\_\_\_ DOLLARS  
(\$ \_\_\_\_\_(8)\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the **PRINCIPAL** entered into a certain contract with the **OWNER**, dated the \_\_\_\_\_ day of \_\_\_\_\_(9)\_\_\_\_\_, \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_(10)\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOW, THEREFORE**, if the **PRINCIPAL** shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the **WORK** provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such **WORK**, and for all labor cost incurred in such **WORK** including that by a **SUBCONTRACTOR**, and to any laborer, mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

**PROVIDED**, that beneficiaries or claimants hereunder shall be limited to the **SUBCONTRACTORS**, and persons, firms, and corporations having a direct contract with the **PRINCIPAL** or its **SUBCONTRACTORS**.

**PROVIDED, FURTHER**, that the said **SURETY** for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the **WORK** to be performed thereunder or the **SPECIFICATIONS** accompanying the same shall in any way affect its obligation on this **BOND**, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the **WORK** or to the **SPECIFICATIONS**.

**PROVIDED, FURTHER**, that no suit or action shall be commenced hereunder by any claimant:

- (a) Unless claimant shall have given the notice or notices required by applicable state law, in the manner required by applicable state law and within the time limits prescribed by applicable state law; or
- (b) After the expiration of the minimum period of limitation permitted by applicable state law.

**PROVIDED, FURTHER**, that it is expressly agreed that this **BOND** shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the **PRINCIPAL** and the **SURETY** to the full and faithful performance of the Contract as so amended. The term "Amendment," wherever used in this **BOND** and whether referring to this **BOND**, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

**PROVIDED, FURTHER**, that no final settlement between the **OWNER** and the **CONTRACTOR** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**WITNESS WHEREOF**, this instrument is executed in \_\_ (11) \_\_ counterparts, each of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ (12) \_\_\_\_\_, \_\_\_\_\_.

**PRINCIPAL:**

\_\_\_\_\_(13)\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_(15)\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_(14)\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

Witness:

\_\_\_\_\_(16)\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

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**SURETY:**

Name: \_\_\_\_\_(17)\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_(19)\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_(18)\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

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**OWNER APPROVAL:**

The OWNER approves the form of this Payment Bond.

Date: \_\_\_\_\_(20)\_\_\_\_\_

Name: \_\_\_\_\_(21)\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_(23)\_\_\_\_\_  
Secretary

By: \_\_\_\_\_(22)\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

NOTES:

1. The date of the Bond must not be prior to the date of the Contract.
2. The amount of the Bond must not be less than the amount of the Contract.
3. If the contractor is a partnership, all partners should execute the Bond.

If the contractor is a corporation, the Bond must be executed by an authorized official of the corporation. Authorization should be evidenced by a corporate resolution.

4. The surety must:

- (a) be a corporation which is authorized to conduct business in the State of Texas;
- (b) be a corporation which is licensed by the State of Texas to execute bonds as a surety; and
- (c) must appear on the Treasury Department's most current list (Circular 570 as amended).  
See the FMI.

5. The Bond must be executed by an authorized representative of the surety. Ordinarily, Bonds are signed by an attorney-in-fact or agent of the surety. The person signing the Bond for the surety should provide a copy of the power of attorney or other evidence of their authority to act on behalf of the surety.

6. The payment bond and the contract must be filed with the county clerk of the county in which is located all or part of the borrower's property on which construction or repair is being performed or is to be performed. [§ 53.203, Texas Property Code] The filing fee shall be paid by the borrower or by the contractor.

7. The owner's attorney must review the construction contract, other contract documents and the payment and performance bonds. The attorney must certify in writing that these documents are adequate and that the persons signing these documents have been properly authorized to do so. RUS Instruction 1780, § 1780.61 (b).